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No. 14835

United States
Court of Appeals
For the Ninth Circuit.

YOUNG AH KWAI and YOUNG AH CHOR,
Appellants,
vs.

JOHN FOSTER DULLES, Secretary of State of
the United States of America,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Hawaii

FILED

DEC 27 1955

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ARTS

AND

LETTERS

OF

AMERICA

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W. D. HOWLAND

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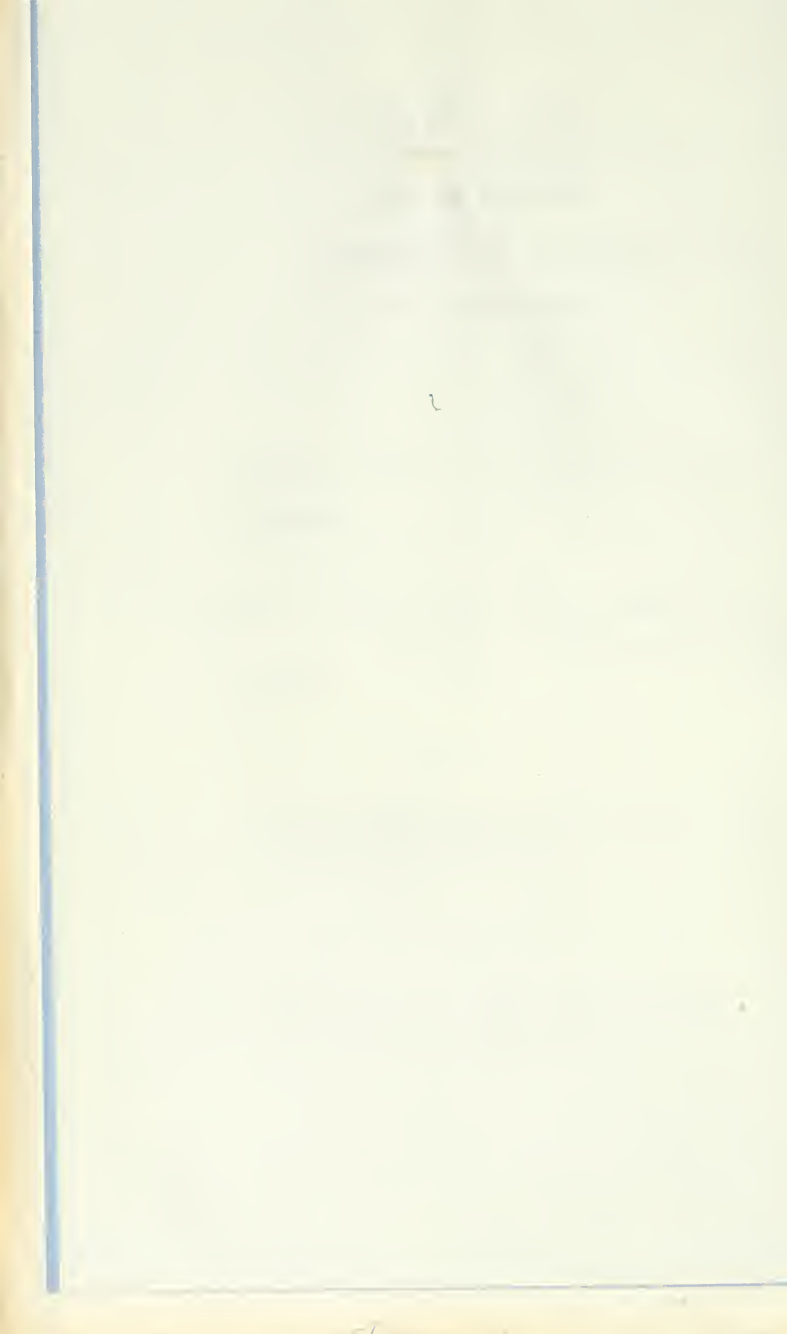
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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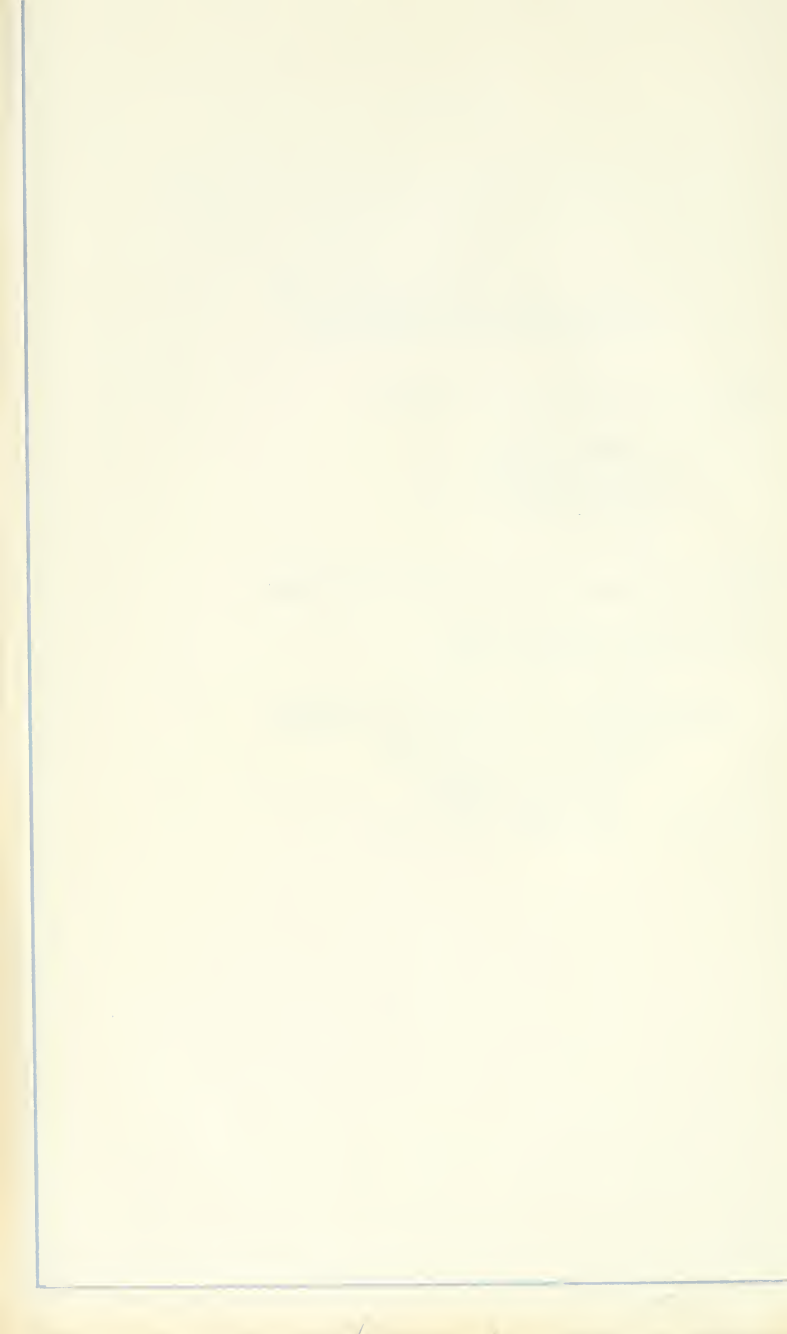
NAMES AND ADDRESSES OF
ATTORNEYS OF RECORD

For the Plaintiff, Young Ah Kwai:

W. Y. CHAR, ESQ.,
942 Maunakea Street,
Honolulu, T. H.

For the Defendant, John Foster Dulles, etc.:

LOUIS B. BLISSARD,
United States Attorney;
CHARLES B. DWIGHT, III, ESQ.,
Assistant U. S. Attorney,
Federal Building,
Honolulu, T. H.



In the United States District Court
for the District of Hawaii

Civil No. 1110

YOUNG AH KWAI and YOUNG AH CHOR,

Plaintiffs,

vs.

JOHN FOSTER DULLES, Secretary of State of
the United States of America,

Defendant.

COMPLAINT UNDER SECTION 503 UNITED
STATES NATIONALITY ACT (8 USCA.
SECTION 903)

Amended Complaint

I.

That the Plaintiffs are citizens of the United States; that they were born in Sun Mun Tung Village, Lung Doo, Chungshan, Kwantung, China, Ah Kwai on CR 9-8-15 (October 14, 1926) and Ah Chor on CR 11-2-13 (November 28, 1924); that they resided in Sun Mun Tung Village aforesaid; and that they claim their United States citizenship by reason of the fact that they are the sons of Young Yick, also known as Young Yick Chong, a citizen of the United States who resided in the United States prior to the birth of the Plaintiffs; and that they claim Hawaii as their residence.

II.

That the Defendant, John Foster Dulles, is the Secretary of the Department of State of the Gov-

ernment of the United States of America and is the head of the United States Foreign Service, with central offices located in Washington, D. C.

That the said Young Yick, also known as Young Yick Chong, was born in Honolulu, City and County of Honolulu, Territory of Hawaii, on the 11th day of April, 1895; that he is and always has been a citizen of the United States of America and is a permanent resident of Honolulu aforesaid, having resided continuously in said Honolulu since birth, with the exception of three (3) trips to China, departing and returning to Honolulu, T. H., on the dates and vessels shown below:

1. Departed from Honolulu in September, 1897, on the SS "Coptie."

Returned to Honolulu in November, 1921, on the SS "Taiyo Maru."

2. Departed from Honolulu on October 10, 1934, on the SS "President Coolidge."

Returned to Honolulu in 1935 on the SS "President Coolidge."

3. Departed from Honolulu in 1947 on the SS "Marine Lynx."

Returned to Honolulu in May 19, 1948, on a Philippine Air Line plane.

IV.

That the said Young Yick, also known as Young Yick Chong, has in his possession as evidence of his United States citizenship, an Order and Judgment

issued on the 6th day of May, 1950, by the District Court of the United States for the District of Hawaii, declaring said Young Yick, also known as Young Yick Chong, to be a national of the United States by virtue of his birth at Palama, Oahu, Territory of Hawaii, on or about April 11, 1895; that he has also a Certificate of Citizenship-Hawaiian Islands, issued to him by the Immigration and Naturalization Station in Honolulu, T. H.

V.

That Young Yick, also known as Young Yick Chong, was married to Young Hoong Shee on the 28th day of the 2nd month of the 6th year of the Chinese Republic (March 21, 1917) in Sun Mun Tung Village, Lung Doo, Chungshan, Kwangtung, China; that from said marriage were born four (4) sons, whose names, dates of birth, places of birth and present addresses are as follows:

Young Ah Choy. CR 7-4-8 (July 30, 1919). Sun Mun Tung Village, Lung Doo, Chungshan, Kwangtung, China. Last known address: Kwong Moon, Kwangtung, China.

Young Ah Kwai, Plaintiff herein, CR 9-8-15 (Oct. 14, 1926). Sun Mun Tung Village, Lung Doo, Chungshan, Kwangtung, China. Honolulu, T. H.

Young Ah Chor, Plaintiff herein, CR 11-2-13 (Nov. 28, 1924). Sun Mun Tung Village, Lung Doo, Chungshan, Kwangtung, China. Honolulu, T. H.

Young Lum Jip. 22nd day, 9th month (Chinese Calendar) in the year 1935 (Oct. 19, 1935). Sun

Mun Tung Village, Lung Doo, Chungshan, Kwangtung, China. Honolulu, T. H.

VI.

That on February 13, 1951, Plaintiffs submitted to the American Consulate General at Hong Kong their applications for recognition as American citizens; that said applications were supported by an affidavit executed by Plaintiffs' father, Young Yick, also known as Young Yick Chong, identifying Plaintiffs as his sons and supporting their claims to citizenship; that, subsequently, they submitted an affidavit by Lee Yau Ting identifying Young Yick, also known as Young Yick Chong, as the rightful owner of the Order and Judgment issued on the 6th day of May, 1950, by the District Court of the United States for the District of Hawaii, declaring Young Yick, also known as Young Yick Chong, to be a national of the United States by virtue of his birth at Palama, Oahu, Territory of Hawaii, on or about April 11, 1895; that said applications and supporting affidavits were submitted for the purpose of documentation as American citizens to enable Plaintiffs to enter and reside in the United States as American citizens; that on July 10, 1951, Young Ah Kwai and Young Ah Chor each executed a formal passport application at the American Consulate General at Hong Kong; that Plaintiffs have complied with all of the requirements of said American Consulate General for information as to their United States citizenship.

That R. B. Shipley, Chief, Passport Division, Department of State, Washington, D. C., informed Sau Ung Loo Chan, Plaintiffs' former attorney, by speedletter, dated October 16, 1951, that said Young Ah Kwai and Young Ah Chor were refused documentation by the Consulate General at Hong Kong; that a copy of said speedletter is hereto attached, marked Exhibit "A," and made a part hereof.

That H. E. Montamat, American Consul at Hong Kong, by letters dated October 22, 1951, one addressed to Young Ah Kwai and another addressed to Young Ah Chor, disapproved each applicant's passport application and denied to each a travel affidavit to enable him to travel to the United States; that copies of said letters are hereto annexed, marked Exhibits "B" and "C," respectively, and made parts hereof.

VII.

That the Defendant is the duly appointed, qualified and acting Secretary of State of the United States; that the American Consulate General at Hong Kong is an official executive of the Defendant herein; that the Plaintiffs, and each of them, as United States citizens, claim all the rights or privileges to which citizens of the United States are entitled; that Plaintiffs, and each of them, had requested the American Consulate General to issue to them United States passports or equivalent documents to enable them to enter and take up permanent residence, as United States citizens, in the United States; that Defendant, by and through his

official executives, has refused to issue to Plaintiffs, and each of them, a United States passport or any other travel document upon the ground that they are not nationals of the United States; that the issuance of a United States passport or equivalent document by the Defendant is a right and/or privilege to which each of the Plaintiffs is entitled as a United States citizen; that Defendant's denial of Plaintiffs' passport applications, executed on July 10, 1951, and refusal to afford the Plaintiffs, facilities for the execution of affidavits for the purpose of travelling to the United States is the denial of a right and/or privilege of citizens and/or nationals of the United States upon the ground that the Plaintiffs are not nationals of the United States.

VIII.

That, as a result of the American Consulate's disapproval of Plaintiffs' applications and refusal to issue to Plaintiffs United States passports or equivalent travel documents, Plaintiffs are unable to enter and reside in the United States, and such refusal is a denial of their rights and privileges upon the ground that they are not nationals of the United States.

Wherefore, Plaintiffs pray for judgment and decree adjudging that they are citizens and/or nationals of the United States and as such are entitled to the rights and/or privileges of citizens and/or nationals of the United States, including the right to be issued United States passports and the right to enter and reside in the United States of America.

Dated: Honolulu, T. H., this 12th day of November, 1954.

YOUNG AH KWAI, and
YOUNG AH CHOR,
Plaintiffs;

By /s/ W. Y. CHAR,
Their Attorney.

EXHIBIT A

(Copy)

Passport Division
Speedletter

This form of communication is used to expedite consideration of your case. Should a reply be necessary, it should be addressed as follows to insure prompt receipt:

In reply refer to F 130—Young Lum Jip.

Date: October 16, 1951.

Passport Division
Department of State
Washington 25, D. C.

Sau Ung Loo Chan,
Attorney at Law,
P. O. Box 3315,
Honolulu, T. H.

Reference citizenship cases of Young Lum Jip,
Young Ah Kwai and Young Ah Chor.

official executives, has refused to issue to Plaintiffs, and each of them, a United States passport or any other travel document upon the ground that they are not nationals of the United States; that the issuance of a United States passport or equivalent document by the Defendant is a right and/or privilege to which each of the Plaintiffs is entitled as a United States citizen; that Defendant's denial of Plaintiffs' passport applications, executed on July 10, 1951, and refusal to afford the Plaintiffs, facilities for the execution of affidavits for the purpose of travelling to the United States is the denial of a right and/or privilege of citizens and/or nationals of the United States upon the ground that the Plaintiffs are not nationals of the United States.

VIII.

That, as a result of the American Consulate's disapproval of Plaintiffs' applications and refusal to issue to Plaintiffs United States passports or equivalent travel documents, Plaintiffs are unable to enter and reside in the United States, and such refusal is a denial of their rights and privileges upon the ground that they are not nationals of the United States.

Wherefore, Plaintiffs pray for judgment and decree adjudging that they are citizens and/or nationals of the United States and as such are entitled to the rights and/or privileges of citizens and/or nationals of the United States, including the right to be issued United States passports and the right to enter and reside in the United States of America.

Dated: Honolulu, T. H., this 12th day of November, 1954.

YOUNG AH KWAI, and
YOUNG AH CHOR,
Plaintiffs;

By /s/ W. Y. CHAR,
Their Attorney.

EXHIBIT A

(Copy)

Passport Division
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This form of communication is used to expedite consideration of your case. Should a reply be necessary, it should be addressed as follows to insure prompt receipt:

In reply refer to F 130—Young Lum Jip.

Date: October 16, 1951.

Passport Division
Department of State
Washington 25, D. C.

Sau Ung Loo Chan,
Attorney at Law,
P. O. Box 3315,
Honolulu, T. H.

Reference citizenship cases of Young Lum Jip,
Young Ah Kwai and Young Ah Chor.

Department informed by Consulate General at Hong Kong that a travel affidavit was issued to Young Lum Jip on October 11, 1951. His alleged brothers, Young Ah Kwei and Young Ah Chor were refused documentation.

/s/ R. B. SHIPLEY,
Chief, Passport Division.

EXHIBIT B

(Copy)

The Foreign Service of the
United States of America

[Stamped]: Consulate General of United States of
America. Nov. 7, 1951. Hong Kong.

American Consulate General,
Hong Kong, October 22, 1951.

Young Ah Kwei,
216 Nam Ping Hotel,
Des Voeux Road,
Hong Kong.

Sir:

With reference to your interview at this Consulate General on August 28 and October 9, 1951, you are informed that you have failed to establish your identity as the son of an American citizen, Young Yiek.

The testimony given by you and your witnesses disclosed wide discrepancies regarding material

facts concerning which you and your alleged brothers should have been in agreement, if your claimed relationship had existed in fact.

In view of the foregoing, the passport application executed by you on July 10, 1951, has been disapproved, and the Consulate General declines to afford you facilities for the execution of an affidavit for the purpose of travelling to the United States.

The facts of your case have been reported to the Department of State, Washington, D. C.

Very truly yours,

For the Consul General:

/s/ H. E. MONTAMAT,
American Consul.

EXHIBIT C

(Copy)

The Foreign Service of the
United States of America

American Consulate General,
Hong Kong, October 22, 1951.

Young Ah Chor,
216 Nam Ping Hotel,
Des Voeux Road,
Hong Kong.

Sir:

With reference to your interview at this Consulate General on August 28 and October 9, 1951, you

are informed that you have failed to establish your identity as the son of an American citizen, Young Yiek.

The testimony given by you and your witnesses disclosed wide discrepancies regarding material facts concerning which you and your alleged brothers should have been in agreement, if your claimed relationship had existed in fact.

In view of the foregoing, the passport application executed by you on July 10, 1951, has been disapproved, and the Consulate General declines to afford you facilities for the execution of an affidavit for the purpose of travelling to the United States.

Very truly yours,

For the Consul General:

/s/ H. E. MONTAMAT,
American Consul.

[Endorsed]: Filed November 13, 1954.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT
ON THE PLEADINGS

Comes now John Foster Dulles, Secretary of State of the United States of America, by his attorneys Louis B. Blissard, United States Attorney for the District of Hawaii, and Charles B. Dwight III, Assistant United States Attorney for the District of

Hawaii, and moves this Honorable Court to enter judgment on the pleadings in favor of the defendant, as to plaintiff Young Ah Kwai, and to dismiss this cause as to plaintiff Young Ah Kwai for the reason that the plaintiff in his complaint has failed to state a claim against the defendant upon which relief can be granted.

Dated: Honolulu, T. H., this 1st day of April, 1955.

LOUIS B. BLISSARD,
United States Attorney,
District of Hawaii;

By /s/ CHARLES B. DWIGHT, III,
Asst. United States Attorney, District of Hawaii,
Attorneys for Defendant.

[Title of District Court and Cause.]

NOTICE

To: W. Y. Char, 311 Liberty Bank Building, Honolulu, T. H., Attorney for Plaintiffs:

You are hereby notified that the attached Motion for Judgment on the Pleadings will be heard before the Honorable J. Frank McLaughlin, Judge, United States District Court for the District of Hawaii, in his courtroom in the Federal Building, Honolulu, T. H., on the 13th day of April, 1955, at the hour of

2:00 o'clock on said date, or as soon thereafter as counsel may be heard.

Dated: Honolulu, T. H., this 1st day of April, 1955.

LOUIS B. BLISSARD,
United States Attorney,
District of Hawaii;

By /s/ CHARLES B. DWIGHT, III,
Asst. United States Attorney, District of Hawaii,
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 1, 1955.

In the United States District Court
for the District of Hawaii

Civil No. 1110

YOUNG AH KWAI and YOUNG AH CHOR,
Plaintiffs,

vs.

JOHN FOSTER DULLES, Secretary of State of
the United States of America,
Defendant.

ORDER AND JUDGMENT

The Motion for Judgment on the Pleadings having come on for hearing on April 27, 1955, the plaintiff, Young Ah Kwai, being represented by W. Y.

Char, Esquire, and the defendant, John Foster Dulles, being represented by Louis B. Blissard, United States Attorney for the District of Hawaii, and Charles B. Dwight III, Assistant United States Attorney for the District of Hawaii, the matter having been fully argued, the Court finds as a matter of law that the plaintiff, Young Ah Kwai, is not now nor has he ever been a citizen or national of the United States;

Now, Therefore, It Is Ordered, Adjudged and Decreed that the Motion for Judgment on the Pleadings be and hereby is granted and that Judgment for the defendant, John Foster Dulles, be entered against the plaintiff, Young Ah Kwai.

It Is Further Ordered and Adjudged that this Order and Judgment take effect nunc pro tunc as of April 27, 1955.

Dated: Honolulu, T. H., this 15th day of June, 1955.

/s/ J. FRANK McLAUGHLIN,
Judge of the Above-Entitled
Court.

[Endorsed]: Filed June 15, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT UNDER RULE 73(b)

Notice is hereby given that Young Ah Kwai, by W. Y. Char, Attorney for plaintiff, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final order and judgment entered in this proceeding on April 27, 1955, granting defendant's motion for judgment on the pleadings and the *nunc pro tunc* order filed on June 15, 1955, granting defendant's motion for judgment on the pleadings.

Dated: Honolulu, T. H., this 17th day of June, 1955.

YOUNG AH KWAI,
Plaintiff;

By /s/ W. Y. CHAR,
His Attorney.

[Endorsed]: Filed June 17, 1955.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents, that Young Ah Kwai, as principal, and Commercial Insurance Company, a corporation duly licensed to carry on business in the Territory of Hawaii, as surety, are

held and firmly bound unto the defendant above named, John Foster Dulles, Secretary of State of the United States of America, hereinafter called the "Appellee" in the sum of Two Hundred Fifty Dollars (\$250.00) for the payment of which well and truly to be made, we bind ourselves and our successors and assigns, jointly and severally, and firmly by these presents.

The condition of this obligation is such that:

Whereas the above bounden principal has filed his Notice of Appeal from the United States District Court of the District of Hawaii to the United States Court of Appeals for the Ninth Circuit to reverse the final judgment of this court made and entered in the above-entitled cause on the 27th day of April, 1955.

Now, Therefore, if the said principal shall prosecute his appeal with effect and answer all costs if he fail to sustain said appeal, then this obligation shall be void, otherwise it remains in full force and effect.

Sealed with our seal, and dated this 27th day of June, 1955.

/s/ YOUNG AH KWAI,
Principal.

COMMERCIAL INSURANCE
COMPANY,

[Seal] By /s/ HAU HEE,
Its Attorney in Fact.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 25th day of June, A. D. 1955, before me appeared Young Ah Kwai, to me personally known, who being by me duly sworn, did say that he is the principal named in the foregoing Bond on Appeal and that he acknowledged said instrument as his free act and deed.

[Seal] /s/ JEANETTE Y. L. LEE,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: 9/25/57.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 27th day of June, A.D. 1955, before me personally appeared Hau Hee, to me personally known, who being duly sworn did say that he is the Attorney-in-Fact of the Commercial Insurance Company, duly appointed under Power of Attorney dated the 6th day of August, 1937, which Power of Attorney is now in full force and effect, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation under the authority of its Board of Directors, and

said Hau Hee acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ JEANETTE Y. L. LEE,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: 9/25/57.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety.

/s/ JON WIIG,
U. S. District Judge.

[Endorsed]: Filed July 5, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 28, consists of a statement of the names and addresses of the attorneys of record and of the various pleadings as hereinbelow listed and indicated:

Originals

Amended Complaint.

Motion for Judgment on the Pleadings.

In the United States Court of Appeals
for the Ninth Circuit

Civil No. 1110

YOUNG AH KWAI and YOUNG AH CHOR.

Plaintiffs-Appellants,

vs.

JOHN FOSTER DULLES, Secretary of State of
the United States of America,

Defendant-Appellee.

APPELLANTS' STATEMENT OF POINTS

Plaintiff-Appellant above named, sets forth the following point on which he intends to rely on appeal:

The court erred in ruling that the plaintiff-appellant, Young Ah Kwai, was not a United States citizen at birth, in that he did not satisfy the residence requirement under section 1993 of the Revised Statutes.

Dated: Honolulu, Hawaii, this 29th day of June, 1955.

YOUNG AH KWAI,
Plaintiff-Appellant.

By /s/ W. Y. CHAR,
His Attorney.

[Endorsed]: Filed July 16, 1955.

